IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9723 of 2002
With
CIVIL APPLICATION NO.4779 OF 1993

HON'BLE MR.JUSTICE K.S.JHAVERI

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTIBEN CHANDRAKANTBHAI THAKOR

Versus

STATE OF GUJARAT

Appearance:
MR VM DHOTRE for Petitioner No. 1
MR PD BHATE, AGP, for Respondent No. 1
MR DC DAVE for Respondent No. 2
RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/08/2004

ORAL JUDGEMENT

1.0 By this petition the petitioner has prayed to quash the communications dated 17.7.2002 and 8.4.2002 passed by the respondent no.2 and 1 respectively and to hold that the petitioner is entitled to receive all the

benefits for the period from 24.11.1993 to 30.3.2001 in view of the decision dated 22.2.2001 passed in LPA No.97/2001.

2.0 The order dated 23/26.12.1994, whereby the petitioner's resignation came to be accepted with effect from 31.3.1993, came to be challenged by way of filing Special Civil Application No.10418/95 in this Court. The said petition was allowed by quashing the order dated 26.12.1994 and held that the petitioner is entitled for all the consequential benefits flowing therefrom. Against the said decision LPA No.97/2001 was filed and by order dated 22.2.2001 the Division Bench of this Court confirmed the said decision rendered in SCA No.10418/95 with a clarification that the respondents will not be entitled for the benefit for the period in which the resignation was in force i.e. from the date of resignation till it was withdrawn by the employee and for the rest of the period she will be entitled to as per the Rules.

2.1 After the rejection of the aforesaid LPA the petitioner was permitted to join the services. However, the benefits flowing from the decision rendered on 22.2.2001 in LPA No.97/2001 were not given to the petitioner. The petitioner therefore filed Misc. Civil Application No.130/2002 for compliance of the decision of this Court which was rejected. In pursuance of the same the petitioner filed SCA No.3461/2002 before this Court praying to direct the respondents to give effect to the decision dated 22.2.2001. This Court by order dated 4.7.2002 directed the respondents to give effect to the order dated 22.2.2001 rendered in LPA No.97/2001.

2.2 In pursuance of the order of this Court dated 4.7.2002 the respondents issued communication dated 17.7.2002 and 8.4.2002 stating that the period from 24.11.1993 to 30.3.2001 would be treated as unauthorised absence and that being so there is no question of making any payment. The petitioners have challenged the aforesaid communications in this petition.

3.1 Learned counsel for the petitioner submitted that the impugned communications were issued contrary to the order passed by the Division Bench of this Court and the same were issued only with a view to nullify the orders of this Court. In spite of the clear order of this Court, the respondents have arbitrarily denied the benefits to the petitioner. It is the case of the petitioner that since she had withdrawn resignation and joined service, she is entitled for the salary from the

date of withdrawal of the resignation till she was dismissed from service.

4.1 In this connection the observation of the Division Bench was very clear which reads as under:

> "We, therefore, negative the contentions raised by the learned counsel for the appellant. However, we clarify that the respondent will not be entitled for benefits for the period in which the resignation was in force, that is, from the date of resignation till it was withdrawn by the employee and for the rest of the period, she will be entitled to all benefits which she is entitled to as per the rules. Under the circumstances, we do not find any substance in this Letters Patent Appeal and with the above observations, we dismiss the same. No order as to costs."

4.2 In spite of the above position the respondent authority has passed the impugned communications treating the leave of the petitioner as unauthorised and she was not paid the salary for the period as referred in the order of the Division Bench. The communications clearly is contrary to the direction issued by this Court. Therefore the present petition is required to be allowed.

5.1 In the premises aforesaid, the petition is allowed. The impugned communications dated 17.7.2002 and 8.4.2002 are hereby quashed and set aside.

5.2 The respondent no.3 shall pay the benefits for the period from 24.11.1993 to 30.3.2001 to the petitioner within a period of four weeks from the date of receipt of writ of this Court, failing which the petitioner will be entitled to get interest at the rate of 9% on the amount in question from 22nd February 2001 till the payment is made.

5.3 In case of delay in payment, the amount will be recovered from the erring officer who is dealing with the payment of the petitioner. Rule is made absolute accordingly with no order as to costs.

5.4 Since the main petition is disposed of, the civil application does not survive and is accordingly disposed of.

[K.S. JHAVERI, J.]

ar